

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND WASHINGTON REGION
STATE OF WASHINGTON

RONALD WASTEWATER DISTRICT, et al.,

Petitioners,

and

KING COUNTY,

Intervenor,

v.

SNOHOMISH COUNTY,

Respondent,

and

OLYMPIC VIEW WATER AND SEWER
DISTRICT AND TOWN OF WOODWAY,

Intervenors.

Case No. 16-3-0004c

**ORDER ON MOTIONS FOR
RECONSIDERATION**

This matter came before the Board on the City of Shoreline's (Shoreline) Request for Reconsideration of the Board's Final Decision and Order (FDO)¹ to Correct Factual Error² (Shoreline's Request for Correction) and Petitioner Ronald Wastewater District's Motion for Reconsideration (Ronald's Motion for Reconsideration).³

Shoreline asserts that the Board should reconsider its January 25, 2017, FDO because of a misinterpretation of facts. Ronald's Motion for Reconsideration disputes the

¹ Issued on January 25, 2017.

² Filed February 1, 2017.

³ Filed February 6, 2017.

1 Board's FDO as to Issue 3. The Town of Woodway (Woodway) filed responses to the
2 Shoreline's Request (Woodway's Answer to Shoreline)⁴ and Ronald Wastewater District's
3 motion (Woodway's Answer to Ronald).⁵

4 A motion for reconsideration of a final decision of the Board is governed by WAC
5 242-03-830. WAC 242-03-830(2) provides that a motion for reconsideration shall be based
6 on at least one of the following grounds:
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8 (a) Errors of procedure or misinterpretation of fact or law, material to the party
9 seeking reconsideration; or

10 (b) Irregularity in the hearing before the board by which such party was
11 prevented from having a fair hearing.

12 I. DISCUSSION

13 Shoreline's Request

14 Shoreline asserts that language in the background facts section of the Board's FDO
15 misstates specific facts and requests revision to the Board's language.
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17 First, Shoreline points out that it is RCW 36.93.090(2) that requires an assumption
18 under RCW 35.13 to be filed with the boundary review board⁶, not RCW 56.08.65 and its
19 successor provisions in chapter 57 RCW, which contain unrelated provisions pertaining to
20 water-sewer districts. Secondly, Shoreline objects to the characterization of the 2014
21 request to the Snohomish Boundary Review Board as a request for a change or expansion
22 to a service area, explaining that it was a request to approve an assumption. Shoreline asks
23 the Board to change "service boundary request" to "assumption request of that portion of
24 the Ronald Wastewater District within Snohomish County."
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26 On response, Woodway does not object to Shoreline's request to strike the statutory
27 reference and to clarify that the issue involves an assumption and not a service boundary
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31 ⁴ Town of Woodway's Answer to City of Shoreline's Request for Reconsideration (February 13, 2017).

32 ⁵ Town of Woodway's Answer to Ronald Wastewater District's Motion for Reconsideration (February 16, 2017).

⁶ Shoreline's Request for Correction at 3.

1 extension.⁷ But Woodway points out that the Board did not make a finding regarding
2 whether the boundaries of Ronald Wastewater District lie within unincorporated Snohomish
3 County and such issue is currently in dispute in *Ronald Wastewater District v. Olympic View*
4 *Water, et al*, King County Cause No. 16-2-15331-3. Woodway worries that Shoreline's
5 suggested phrase, "that portion of the Ronald Wastewater District within Snohomish
6 County", could be interpreted as such a finding.⁸ Woodway requests the Board modify the
7 phrase to read "that portion of the Ronald Wastewater District *alleged to be* within
8 Snohomish County", language reflecting that dispute.
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10 Based on the foregoing, the City of Shoreline's Motion for Reconsideration is
11 **granted.**

12 On reconsideration, the parties' complaints are well-taken. Although the inaccurate
13 language is not relevant to the Board's FDO and was merely provided as context, the Board
14 understands that inaccurate statements could reappear in subsequent litigation. As
15 Shoreline notes, the statutory reference is correctly made to RCW 35.13 in the preceding
16 paragraph of the Board's FDO.⁹ The Board will strike the statutory reference as requested
17 by Shoreline.
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19 As to the dispute over whether the area to be assumed is within Snohomish County,
20 the Board declines to wade into a dispute not necessary to its decision. Rather than add
21 "alleged to be", the Board will not add language that may be in dispute.
22

23 The Board concludes that the language on page 9, lines 3-10, of its FDO should be
24 revised as follows:

25 ~~However, former RCW 56.08.065, repealed and replaced by Title 57 RCW in~~
26 ~~1996, required approval for a wastewater district's provision of sewer service~~
27 ~~beyond the district's boundaries to be subject to review by the boundary~~
28 ~~review board. To that end, Shoreline petitioned the Snohomish County~~
29 ~~Boundary Review Board (Snohomish BRB) in 2014 and Snohomish County,~~
30 ~~Woodway and Olympic View, which provides wastewater service to portions of~~
31 ~~Woodway appeared before the Snohomish BRB in objection to Shoreline's~~

32 ⁷ Woodway's Answer to Shoreline at 1-2.

⁸ Woodway's Answer to Shoreline at 2.

⁹ FDO at 8; Shoreline Request for Correction at 3 and fn. 1.

1 service boundary assumption request of a portion of the Ronald Wastewater
2 District. The Snohomish BRB denied the expansion assumption.

3 Ronald's Motion for Reconsideration

4 Ronald asks the Board to reconsider its conclusion that the Petitioners failed to meet
5 their burden to show that Snohomish County Amended Motion No.16-135 ("Motion 16-135")
6 is inconsistent with utility policies expressed in Objective UT 1.B, Goal UT 3, and Objective
7 UT 3.A of the County's General Policy Plan (Issue 3).¹⁰ Ronald notes that the Board
8 concluded that King County had not explained or supported the inconsistency asserted in
9 Issue 3 sufficiently to carry the burden to prove the County's action was clearly erroneous.
10 From this wording, Ronald concludes that the Board may not have considered its arguments
11 on this issue.
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13 The Board agrees that the reference to only King County's argument could support
14 Ronald's conclusion, and this error is particularly important where the burden was on
15 Petitioners Ronald and Shoreline and not just Intervenor King County. Accordingly,
16 Petitioner Ronald Wastewater District's Motion for Reconsideration as to Issue 3 is **granted**.
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19 **Issue Three:**

20 Does Amended Motion No. 16-135 fail to comply with the GMA's internal consistency
21 requirement in RCW 36.70A.070 (Preamble) and with the GMA's capital facilities
22 planning requirements in RCW 36.70A.070(3) because the Olympic View
23 Amendment is inconsistent with the Utilities Chapter of the County's General Policy
24 Plan, which emphasizes the need for coordination of external functional plans and
25 requires consistency among district utility plans and consistency between such plans
26 and the County's Comprehensive Plan through objectives such as Objective UT 1.B
27 ("Achieve and maintain consistency between utility system expansion plans and
28 planned land use patterns") and UT Policy 1.B.2 ("The county shall maintain
29 consistency between district utility plans and the county's comprehensive plan"); Goal
30 UT 3 ("Work with cities and special districts to produce coordinated wastewater
31 system plans for both incorporated and unincorporated areas within UGAs that are
32 consistent with the land use element and city plans"); and Objective UT 3.A ("Utilize
wastewater system plans as a basis for orderly development or expansion within
UGAs in accordance with the Countywide Planning Policies")?

¹⁰ FDO at 24.

1 Applicable Law

2 **RCW 36.70A.070** establishes the required elements of comprehensive plans. The
3 Preamble states in pertinent part:

4 The comprehensive plan of a county ... shall consist of a map or maps, and
5 descriptive text covering objectives, principles, and standards used to develop
6 the comprehensive plan. The plan shall be an internally consistent document
7 and all elements shall be consistent with the future land use map.

8 Required elements include a capital facilities plan¹¹ and a utilities element:¹²

9 Each comprehensive plan shall include a plan, scheme, or design for each of
10 the following:

11 ***

12 (3) A capital facilities plan element consisting of: (a) An inventory of existing
13 capital facilities owned by public entities, showing the locations and capacities
14 of the capital facilities; (b) a forecast of the future needs for such capital
15 facilities; (c) the proposed locations and capacities of expanded or new capital
16 facilities; (d) at least a six-year plan that will finance such capital facilities ...

17 (4) A utilities element consisting of the general location, proposed location,
18 and capacity of all existing and proposed utilities ...

19 **Snohomish General Plan Objective UT 1.B** - Achieve and maintain consistency between
20 utility system expansion plans and planned land use patterns.¹³

21 **Snohomish General Plan UT Policy 1.B.2** - The county shall maintain consistency
22 between district utility plans and the county's comprehensive plan.¹⁴

23 **Snohomish General Plan Goal UT 3** - Work with cities and special districts to produce
24 coordinated wastewater system plans for both incorporated and unincorporated areas within
25 UGAs that are consistent with the land use element and city plans.¹⁵

26 **Snohomish General Plan Objective UT 3.A** - Utilize wastewater system plans as a basis
27 for orderly development or expansion within UGAs in accordance with the Countywide
28 Planning Policies.¹⁶

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30 ¹¹ RCW 36.70A.070(3).

31 ¹² RCW 36.70A.070(4).

32 ¹³ Snohomish County General Policy Plan – Utilities, p. UT-2.

¹⁴ *Id.*

¹⁵ Snohomish County General Policy Plan – Utilities, p. UT-6.

¹⁶ *Id.*

1 Discussion

2 In order to prevail under the portions of RCW 36.70A.070 allegedly violated,
3 Petitioners must show how the County's Comprehensive Plan elements are inconsistent
4 with each other or the future land use map, or that the capital facilities' plan does not
5 contain required components.

6 In its FDO, the Board found and concluded that Amended Motion 16-135 creates an
7 internal inconsistency between Snohomish County's 2015 Capital Facilities Plan and
8 General Plan Policy UT 1.B.2 in violation of RCW 36.70A.070.¹⁷ Here, the Board is asked to
9 reconsider whether Amended Motion 16-135 creates an inconsistency between the
10 County's CFP and General Plan Objective UT 1.B, Goal UT 3 and Objective UT 3.A.

11 In its prehearing brief, Ronald observed that the County's Utilities Element
12 "emphasizes the need for consistency among utility expansion plans, planned land use
13 patterns and the CP, and it specifically emphasizes coordinated wastewater system
14 planning and orderly development and expansion of sewers," and then concludes that "the
15 Amendment thwarts these policies and departs from the goals [of working toward
16 coordinated wastewater system plans as a basis for the orderly development of systems for
17 Pt. Wells]." ¹⁸ No argument explains how the overlapping districts' expansion plans are
18 inconsistent with land use patterns (UT 1B). Neither did Ronald explain how the County
19 had failed to work with the parties to produce plans consistent with the land use element
20 and city plans (UT 3). As the General Policy Plan explains:
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24 Concurrency review is not currently utilized for non-county facilities, however,
25 an adequacy test for utility infrastructure is utilized... in reviewing development
26 applications.¹⁹

27 Shoreline asserts that the "County has plans for sewer service that far exceed the
28 growth anticipated in Point Wells."²⁰ The Board, again, agrees with Shoreline that the
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30 ¹⁷ FDO at 24. Conclusion of Law: Adoption of Amended Motion 16-135 creates internal inconsistency between
31 Snohomish County's 2015 Capital Facilities Plan and General Plan Policy UT 1.B.2.

32 ¹⁸ Ronald Brief at 19-20.

¹⁹ Snohomish County General Policy Plan-Utilities at page UT-2.

²⁰ City of Shoreline's Prehearing Brief at 13.

1 “ability of two competing CPs to work in a coordinated fashion ... is frustrated with such an
2 overlap”²¹, but that is a different argument. Petitioners have not shown that over-capacity
3 constitutes a violation of RCW 36.70A.070 in regards to Issue 3.

4 Similarly, there is no argument as to how Amended Motion 16-135 is inconsistent
5 with Countywide Planning Policies (General Policy Plan Objective UT 3.A²²). Ronald does
6 not even identify any countywide planning policies with which the Amended Motion 16-135
7 is allegedly inconsistent.

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9 In sum, Petitioners assert that “the Olympic View Amendment is inconsistent with
10 County policies emphasizing the need for coordination and consistency among CSPs and
11 the Comprehensive Plan.”²³ Ronald’s arguments all go to the problem of the inconsistency
12 between overlapping CSPs (UT 1.B.2), and the Board has agreed.²⁴ But the Petitioners do
13 not explain how Olympic View’s amended CSP creates inconsistency between utility
14 expansion plans and land use patterns. A bare assertion does not suffice to meet
15 Petitioners’ burden to show that Amended Motion 16-135 is clearly erroneous as to the land
16 use plans or countywide planning policies.

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18 Ronald advances additional arguments in its reply as to its “exclusive right to serve
19 Point Wells” and “first-in-time rights under RCW Title 57,”²⁵ but the Board does not have
20 jurisdiction over Title 57 disputes and will not address those arguments.

21 **The Board finds** King County and Petitioners have not carried their burden to show
22 that Amended Motion 16-135 is inconsistent with Objective UT 1.B, Goal UT 3 and
23 Objective UT 3.A in violation of RCW 36.70A.070.
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30 ²¹ *Id.*

31 ²² Utilize wastewater system plans as a basis for orderly development or expansion within UGAs in
32 accordance with the Countywide Planning Policies.

²³ Ronald’s Prehearing Reply Brief at 9.

²⁴ See Final Decision and Order, January 25, 2017, at 19-22.

²⁵ *Id.*

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II. ORDER

Based upon review and consideration of the Requests for Reconsideration and the briefs submitted by the parties and having deliberated on the matter, the Board Orders as follows:

1. The Motions for reconsideration filed by Shoreline and Ronald are granted;
2. On reconsideration, the language on page 9, lines 3-10, of the FDO shall be amended to read as follows:

~~However, former RCW 56.08.065, repealed and replaced by Title 57 RCW in 1996, required approval for a wastewater district's provision of sewer service beyond the district's boundaries to be subject to review by the boundary review board. To that end, Shoreline petitioned the Snohomish County Boundary Review Board (Snohomish BRB) in 2014 and Snohomish County, Woodway and Olympic View, which provides wastewater service to portions of Woodway appeared before the Snohomish BRB in objection to Shoreline's service boundary assumption request of a portion of the Ronald Wastewater District. The Snohomish BRB denied the expansion assumption.~~
3. On reconsideration, the Board finds and concludes Petitioners and King County have not carried their burden to show that Amended Motion 16-135 is inconsistent with Objective UT 1.B, Goal UT 3 and Objective UT 3.A in violation of RCW 36.70A.070.
4. All other terms, conditions, findings and conclusions of the Final Decision and Order shall remain in full force and effect.

Entered this 24th day of February, 2017.

Cheryl Pflug, Board Member

Deb Eddy, Board Member

William Roehl, Board Member

1 **Note: This is a final decision and order of the Growth Management Hearings Board**
2 **issued pursuant to RCW 36.70A.300.²⁶**
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32 ²⁶ A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.